FILED

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TONGXING MAO,	No. 05-74764
Petitioner,	
v.	Agency No. A78-579-692
MICHAEL B. MUKASEY, Attorney General,	MEMORANDUM[*]
Respondent.	

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2008[**]

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Tongxing Mao, a native and citizen of China, petitions for review of a Board

of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration

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[*]   This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**]   The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

JC/Research

judge's ("IJ") decision denying his claims for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review, and remand.

The government did not waive its current contentions when it requested a remand to the BIA in Mao's prior petition for review. *See Li v. Keisler*, 505 F.3d 913, 918-19 (9th Cir. 2007) (order) (acknowledging that government should retain flexibility to voluntarily remand in order to correct prior actions that have been subsequently called into question by emerging case law).

In the absence of an explicit adverse credibility finding by the IJ, the BIA erred by resting its denial of relief on Mao's failure to provide corroborating evidence. *See Kataria v. INS*, 232 F.3d 1107, 1114 (9th Cir. 2000).

In light of our conclusion regarding the issue of adverse credibility as determined by the BIA, Mao's due process contention is moot.

Accordingly, we grant the petition for review, and remand to the BIA for further proceedings consistent with this disposition. *See INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.